
(2009) 03 SHI CK 0047
In the High Court Of Himachal Pradesh

Sudesh Kumari and Others

APPELLANT

Vs

Shivalik Hatcheries Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Workmens Compensation Act, 1923 — Section 21

Citation : (2010) ACJ 1779 : (2009) 4 LLJ 805 : (2009) 2 ShimLC 1

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Sanjay Karol, J.—In the present appeal, the appellants have assailed the award dated 17.11.2004 passed by the Commissioner under the Workmen's Compensation Act, Nalagarh, District Solan, in Case No. 2/2002, titled as Smt. Sudesh Kumari and Ors. v. Shivalik Hatcheries Pvt. Ltd. and Ors. whereby their application u/s 21 of the Workmen's Compensation Act, 1923 (for short, the Act) stands dismissed. Brief facts giving rise to the present petition are as under:

Shri Kashmir Singh, husband of petitioner No. 1 and father of petitioners No. 2, 3 and 4 was employed with respondents No. 1 and 2 as driver on Tempo No. HP-12-2042. On 12.4.1997 the vehicle met with an accident in which Shri Kashmir Singh sustained personal injuries arising out of and in the course of his employment. He had to be hospitalized at Rajindra Hospital, Patiala and subsequently at Dr. Parmar Nursing Home, Ropar. He became permanently disabled due to multiple injuries which he received on his body. On 10.5.2001, Shri Kashmir Singh died due to heart attack. Allegedly he could not recover from his earlier injuries and the heart attack was a direct result of the said accident. The deceased was 35 years of age at the time of accident and getting a monthly salary of Rs. 2,600. The claimants filed a petition claiming compensation.

2. The employees, respondents No. 1 and 2, in their reply admitted the factum of the accident but disputed the claim as death did not arise due to an accident arising out of and in the course of employment. It was, however, stated that full and final payment of Rs. 1,31,671/- stood released in favour of the deceased

with respect to the accident which had taken place in the year 1997. Shri Kashmir Singh had not suffered permanent physical disability impairing his earning capacity. In any event he died due to a heart attack at his house when he was off duty.

3. Respondent No. 3-Oriental Insurance Company disputed the claim, inter alia, on the ground that in the absence of any post-mortem there is nothing on record to show that the death was unnatural or due to the earlier accident.

4. Based on the pleadings of the parties, the Commissioner framed the following issues:

1. Whether the deceased was a workman under the definition of the Act and sustained injuries during discharging the duties? OPA

2. Whether the deceased died due to the injuries sustained while discharging his duties? OPA

3. Whether the applicants are entitled for compensation? OPA

4. Whether the deceased was not holding valid and effective driving licence at the time of accident? OPR-2

5. Opportunities to adduce evidence were afforded to the parties and appreciating the material on record, the Tribunal concluded that the injuries sustained by the Shri Kashmir Singh in relation to the accident dated 12.4.1997 were in discharge of his duties. The deceased recovered and thereafter resumed his duties when the employees kept him as a Supervisor in lieu of a driver. In the absence of any proof linking the leg injury with that of heart attack causing death, it could not be held that the deceased died due to an accident arising out of and in the course of employment. The application was consequently dismissed.

6. I have heard the learned Counsel for the parties and also perused the record.

7. In order to prove her case, appellants examined HC Faquir Chand (PW-1), Shri Gurcharan Singh (PW-2), Smt. Jagtar Kaur (PW-3), Shri Rashpal Singh (PW-4) and claimant/appellant No. 1 Smt. Sudesh Kumari (PW-5).

8. In rebuttal respondents examined Dr. Harbhajan Singh (RW-1), Shri Bhagwan Chand (RW-2), Shri Mohinder Lal (RW-3) and Shri Sushil Kumar (RW-4).

9. That the accident of the truck, being driven by the claimant took place on 14.4.1997 is evident from FIR (Ext.PW-1/A). That he sustained injuries and was medically treated is also evident from the various documents (Mark A to Mark G). The respondents had paid a sum of Rs. 1,31,671/- to the widow stands proved from Ext.RW-1/B. It is clear that the Company-respondents No. 1 and 2 paid the following amounts:

Arrears Rs. 2,022/- Gratuity Rs. 30,649/- E.D.L.I. Rs. 41,000/- PF Payments Rs. 55,000 approx. Total Rs. 1,31,671/-

In addition thereto a sum of Rs. 1744/- was paid as pension per month by the P.F. Department.

10. The vehicle was insured with Oriental Insurance Company stands proved from Ext.RW-1/A. From the material on record and statements of claimants' witnesses it is undoubtedly clear that Shri Kashmir Singh being an employee of respondents No. 1 and 2 met with an accident on 12.4.1997. He was got medically treated from various Institutions and after having fully recovered, was put on light duty and assigned light work. Thereafter on 10.5.2001- he suffered a heart attack in his house on 10.5.2001 and had to be hospitalized immediately. PW-5 has categorically deposed that after the accident the deceased was given light duties and his working hours were from 8 a.m. to 5 p.m. He was also allotted residential quarter and on 10.5.2001 he fell ill and was hospitalized at Nalagarh, where he unfortunately died. She admitted that the respondents had deployed someone to make all arrangements at the Hospital. She, however, has a grievance that the Company did not get the post-mortem carried out. It is not the case of the claimants that the Company deliberately avoided the post-mortem. Even though there is no post-mortem report, but, however, on record it is admitted that he suffered a heart attack and died in the Hospital due to the same.

11. Be that as it may be, the fact which emerges from record is that Shri Kashmir Singh died due to heart attack. He had been assigned light duties and was not asked to perform arduous duties and jobs at odd hours. His duties were normal and there was no stress or strain, mental, physical or psychological of any nature. Further there is nothing on record to prove the fact that the heart attack was a direct result of the injury sustained in the motor accident and that too four years prior to the death. In the absence of any evidence of casual connection, it cannot be said that Shri Kashmir Singh died due to an accident in discharge or in the course of his employment. There is no material on record which can remotely show the casual connections between the previous injury and the heart attack entitling the claimants to the compensation.

12. Learned Counsel for the appellant has referred to the decisions in New India Assurance Company Ltd. Vs. Smt. Usha Devi and Others, ; M/s. New India Assurance Company Ltd. v. Basanti Devi and Anr. 2000 Lab.I.C. 759; General Manager, Barsuan Iron Mines v. Mukta Naik 2001 Lab.I.C. 368 and H.P. State Forest Corporation Ltd. Vs. Narmada Devi and Others, The ratio of the decisions has to be considered in the facts and circumstances of each case. These are decisions of the High Courts. In view of the latest decision of the Supreme Court in Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali and Anr. (2007) 11 SCC 668, I need not to advert to the same.

13. While dealing with a case of an employee who died due to heart attack, the Apex Court in Shakuntala Chandrakant Shreshti (supra) has held as under:

There is a crucial link between the casual connections of employment with death.

Such a link with evidence cannot be a matter of surmise or conjecture. If a finding is arrived at without pleading or legal evidence the statutory authority will commit a jurisdictional error while exercising jurisdiction. There must be some evidence that the employment contributed to the death of the deceased. It is required to be established that the death occurred during the course of employment.

The claimant was bound to prove jurisdictional fact before the Commissioner. Unless such jurisdictional facts are found, the Commissioner will have no jurisdiction to pass an order. For arriving at a finding of a jurisdictional fact, reference to any precedent would not be helpful as a little deviation from the facts of a decided case or an additional fact may make a lot of difference by arriving at a correct conclusion. For the said purpose, the statutory authority is required to pose unto itself the right question.

In a case of this nature (death due to cardiac arrest) to prove that accident has taken place, factors which would have to be established, inter alia, are:

- (i) stress and Strain arising during the course of employment
- (ii) nature of employment
- (iii) injury aggravated due to stress and strain.

Only because a person dies of heart attack, the same does not give rise to automatic presumption that the same was by way of accident. Circumstances must exist to establish that death caused by reason of failure of the heart was because of stress and strain of work. Sufferance of heart disease amongst young persons is not unknown. A disease of the heart may remain undetected. A person may suffer mild heart attack but he may not feel any pain. Stress and strain resulting in a sudden heart failure in a case of the present nature would not be presumed. No legal fiction therefore can be raised. As a person suffering from a heart disease may not be aware thereof, medical opinion therefore would be of relevance. Each case, therefore, has to be considered on its own facts and no hard-and-fast rule can be laid down therefore. Unless evidence is brought on record to elaborate that the death by way of cardiac arrest has occurred because of stress or strain, the Commissioner would not have jurisdiction to grant damages.

The Apex Court has also held:

A question of law would arise when the same is not dependent upon examination of evidence, which may not require any fresh investigation of fact. A question of law would, however, arise when the finding is perverse in the sense that no legal evidence was brought on record or jurisdictional facts were not brought on record. A jurisdictional question will involve a substantial question of law. A finding of fact arrived at without there being any evidence would also give rise to a substantial question of law.

The Court will not disturb a finding of an administrative tribunal when two views

are possible and only because the appellate Court can take a contrary view. But in the instant case, the Commissioner did not go into the jurisdictional facts nor arrived at any finding based on any legal evidence in regard to the casual connection between the employment and the death.

14. On 30.3.2005 the appeal was admitted but no substantial question of law was framed. The parties were heard on the same.

15. The findings in the award are based on the material on record. The evidence as also the law has been correctly appreciated. There is no perversity in the same.

16. In view of aforesaid discussion, no substantial question of law arises for consideration. The appeal is accordingly dismissed. No costs.